The Benefit Cap

By Wendy Wilson

Inside:
1. Background
2. Rationale
3. Numbers & characteristics of affected households
4. Reaction and comment
5. Reducing the cap threshold
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>1. Background</strong></td>
<td>4</td>
</tr>
<tr>
<td>Rolling out the benefit cap</td>
<td>4</td>
</tr>
<tr>
<td>Setting the level of the cap</td>
<td>4</td>
</tr>
<tr>
<td>Calculating the cap: included and excluded benefits</td>
<td>4</td>
</tr>
<tr>
<td>Applying the cap</td>
<td>7</td>
</tr>
<tr>
<td><strong>2. Rationale</strong></td>
<td>8</td>
</tr>
<tr>
<td><strong>3. Numbers &amp; characteristics of affected households</strong></td>
<td>9</td>
</tr>
<tr>
<td><strong>4. Reaction and comment</strong></td>
<td>13</td>
</tr>
<tr>
<td>Supported and temporary accommodation</td>
<td>16</td>
</tr>
<tr>
<td>The cap and affordable rent tenure</td>
<td>20</td>
</tr>
<tr>
<td>The Welfare Reform Bill in the House of Lords</td>
<td>21</td>
</tr>
<tr>
<td>Secondary Legislation Scrutiny Committee – 10th Report 2012</td>
<td>24</td>
</tr>
<tr>
<td>Assessment by the Equality and Human Rights Commission (EHRC)</td>
<td>25</td>
</tr>
<tr>
<td>Legal challenge</td>
<td>26</td>
</tr>
<tr>
<td>One year review of the cap</td>
<td>27</td>
</tr>
<tr>
<td><strong>5. Reducing the cap threshold</strong></td>
<td>31</td>
</tr>
<tr>
<td>Is primary legislation required?</td>
<td>31</td>
</tr>
<tr>
<td>Comment</td>
<td>33</td>
</tr>
</tbody>
</table>
Summary

As part of the October 2010 Spending Review the Coalition Government announced an intention to cap total household benefits at £500 per week for a family (£26,000 per year) and £350 per week (£18,200 per year) for a single person with no children. Households with income from benefits in excess of these caps experience a reduction in their Housing Benefit entitlement.

Measures to introduce the cap were included in sections 96 and 97 of the Welfare Reform Act 2012 and the Benefit Cap (Housing Benefit) Regulations 2012. Implementation was somewhat delayed but it was fully rolled out by September 2013. Provision for a benefit cap has also been included in the Universal Credit Regulations 2013.

The benefit cap was one of the Coalition Government’s welfare reform measures aimed at deficit reduction. The key aims were to:

- increase incentives to work;
- introduce greater fairness into the welfare system between those on out-of-work benefits and taxpayers in employment; and
- make financial savings and incentivise behaviours that reduce long-term dependency on benefits.

Between its introduction and February 2015, 58.7 thousand households experienced a reduction in their Housing Benefit as a result of the cap. As expected, most of the affected households were larger families and those living in a high rent area. The majority of the affected households lived in London (45%). The Coalition Government declared the policy a success on the basis that 22,000 of the affected households “have moved into work, reduced their Housing Benefit claim or [are] no longer claiming Housing Benefit at all.”

A commitment to reduce the cap from £26,000 to £23,000 was included in the Conservative Party’s 2015 Manifesto after being initially announced as part of a package of measures aimed at funding three million apprenticeships during the Party’s 2014 Conference. Briefing notes on the 2015 Queen’s Speech refer to the introduction of a “Full Employment and Welfare Benefits Bill and other legislation” to encourage employment by capping benefits. In addition to emphasising the number of households no longer affected by the cap as an indication of its success in incentivising work, the Government has referred to the wide public support it attracts.

Social landlords, whose tenants are heavily reliant on Housing Benefit to meet their rent commitments, are concerned that a lower benefit cap will render a substantial number of their homes, particularly those let on affordable rents (up to 80% of market levels), unaffordable in London and the south east. In turn, they argue that an insecure rental stream could have implications for attracting private funding for the development of new affordable housing.
1. Background

Rolling out the benefit cap
As part of the October 2010 Spending Review the Government announced an intention to cap total household benefits at £500 per week for a family and £350 per week for a single person from 2013. It was expected that the cap would apply nationally from April 2013 but on 19 December 2012 the Government announced a phased roll-out. Croydon, Haringey, Bromley and Enfield Councils were the first authorities to apply the benefit cap from April 2013 to “enable DWP to ensure a measured approach to the roll out of the cap.”1 National implementation was managed over a 10 week period split into two tranches:

- Tranche 1 included all local authorities with 275 households or fewer - capping commenced on 15 July 2013.
- Tranche 2 included all local authorities with 276 or more households to be capped – capping commenced in the week of 12 August 2013.

The DWP provided a Local authority tranche breakdown. On 27 September 2013 the DWP reported that the cap had been successfully rolled-out nationwide.2

Setting the level of the cap
The explanatory memorandum to the draft Housing Benefit (Benefit Cap) Regulations 2012 explained the basis on which the level of the cap had been set:

The 2010 Spending Review announced that from 2013 household welfare payments will be capped on the basis of median earnings after tax and national insurance contributions for working households. An estimate for this was produced using the Department for Work and Pensions’ Policy Simulation Model.3 In line with this and with figures used in Parliamentary debates during the passage of the Welfare Reform Bill the Government has decided that the level of total entitlement to welfare benefits will be capped at £500 a week for couples and lone parent households. The level of entitlement for single adults will be capped at £350 per week. Again this was the estimate used during Parliamentary debates and is approximately 70% of the couple rate and is in line with the Organisation for Economic Co-operation and Development’s (OECD) equivalisation factors which adjust incomes to take into account both the size and composition of households.4

Calculating the cap: included and excluded benefits
The cap is calculated by adding together all the included benefits that an individual, their partner, and any children they are responsible for

---

1 HB/CTB Bulletin G12/2012
2 DWP Press Release, 27 September 2013
3 This is a static microsimulation model based on data from the 2008-09 Family Resources Survey, up-rated to the relevant year’s prices, benefit rates and earnings levels. The modelling was carried out under the current benefit system rules.
4 DWP, Explanatory memorandum, June 2012
and who live with them, are entitled to. The calculation does not include the benefits of non-dependants.5

The following benefits are taken into account when calculating the cap:

- Bereavement Allowance/ Widowed Parent’s/Mother’s Allowance
- Carer’s Allowance
- Child Benefit
- Child Tax Credit
- Employment and Support Allowance (ESA) (contribution-based and income-related) except where the Support Component has been awarded
- Guardian’s Allowance
- Housing Benefit
- Incapacity Benefit
- Income Support
- Jobseeker’s Allowance (contribution-based and income-based)
- Maternity Allowance
- Severe Disablement Allowance (SDA)
- Widow’s Pension

Any benefits or other income that are not included in the above list are not taken into account when calculating the level of the cap.

The following benefits and payments are disregarded when calculating the cap:

- Bereavement payment
- Council Tax Benefit or the replacement localised support for Council Tax
- Discretionary Housing Payments
- Social Fund Payments – all one off payments:
- Budgeting Loans
- Cold Weather Payments
- Community Care Grants
- Crisis Loans

5 A non-dependant is someone who normally lives with the benefit claimant such as an adult son, daughter, relative or friend.
• Funeral Payments
• Sure Start Maternity Grants
• Pension Credit
• Residency order payments
• Statutory Adoption Pay – Paid by employers.
• Statutory Maternity Pay – Paid by employers.
• Statutory Paternity Pay – Paid by employers.
• Statutory Sick Pay - Paid by employers.
• Winter Fuel Payment.

In December 2012 the Government announced that Housing Benefit paid to households in supported exempt accommodation (S(E)A) would be disregarded from the benefit cap:

The disregard will apply both to benefit cap cases under HB from April 2013 and under Universal Credit (UC). While this does not mean that these households are exempt, by not including HB in the calculation we expect that the vast majority of these cases will no longer be affected by the cap.

[...]

This change has been made following consideration of the representations raised in recent weeks, particularly in light of the decision to pay housing support outside UC for those living in S(E)A. This positive step will help protect this vulnerable group.

[...]

We will be amending the Benefit Cap (Housing Benefit) Regulations 2012 early in the new year with the aim of having the disregard in place as soon as possible after the benefit cap comes into force. Timing will be subject to consultation with Las. 6

The relevant amendments were made by the Benefit Cap (Housing Benefit) (Amendment) Regulations 2013 (SI 2013/546) which came into force on 15 April 2013. These regulations amended SI 2012/2994 to provide that, when calculating the maximum amount of welfare benefit entitlement, an authority must ignore any Housing Benefit paid in respect of specified kinds of supported accommodation.

Claimants in receipt of certain benefits and payments are exempt from the cap:

Entitlement to Working Tax Credit: In order to increase the incentive to find a job or increase hours worked, all benefit households which are entitled to Working Tax Credit (WTC) will be excluded from the cap. This includes households who are working sufficient hours to qualify for WTC but whose earnings are so great that they have been awarded a “nil entitlement.”

Receipt of Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Industrial
Injuries Benefits (and equivalent payments made as part of a war disablement pension or the Armed Forces Compensation Scheme) or the Support Component of Employment and Support Allowance: This is in recognition of the additional financial costs that can arise from disability and that disabled people will have less scope to alter their spending patterns or reduce their housing costs.

War Widows and Widowers: An exemption will apply to any war widow or widower who is in receipt of a pension paid under the relevant parts of the War Pension Scheme, Armed Forces Compensation Scheme or analogous schemes. This supports the aim of the Armed Forces Covenant to recognise sacrifice of those seriously injured or killed in the service of their country. 7

A nine-month “grace period” operates during which the cap does not apply to claimants who have been in work for the previous 12 months and who lose their job through no fault of their own.

Applying the cap
The cap is, in the first instance, being administered by local authorities and operates by reducing the claimant’s Housing Benefit entitlement where their total amount of benefit entitlement (excluding certain specified benefits) exceeds £500 per week for a family or £350 per week for a single person. Once households have been transferred to Universal Credit, the cap will apply to their combined income from Universal Credit and benefits, including Child Benefit and Carer’s Allowance. There is no right of appeal against the decision to apply the benefit cap but claimants can request a review if they think the cap has been calculated incorrectly.

Provisions to enable implementation of the cap are contained in the Welfare Reform Act 2012. The draft Housing Benefit (Benefit Cap) Regulations 2012 were published for consultation and referred to the Social Security Advisory Committee (SSAC) in June 2012. Subsequently, the (renamed) Benefit Cap (Housing Benefit) Regulations, which were subject to the affirmative resolution procedure, were laid on 16 July 2012 and considered in both Houses on 6 November 2012. The final Benefit Cap (Housing Benefit) Regulations 2012 (SI 2012/2994) set out:

- the level of the benefit cap;
- how a household’s overall entitlement to welfare benefits for comparison with the cap will be calculated;
- what benefits will or will not be taken into account;
- how any reduction will be applied;
- exemptions;
- the relationship between the cap and benefit sanctions and other deductions;
- rules on decision-making and appeals.

7 DWP, Explanatory memorandum, June 2012
The DWP published an explanatory memorandum on the draft Regulations for use by the SSAC. *The Universal Credit Regulations 2013* provide for an overall benefit cap within Universal Credit (UC). UC is in the process of being phased in – roll-out is not expected to be complete until 2019.

2. Rationale

The [Impact Assessment for the Household Benefit Cap](#) explains the thinking behind it:

The objective of the policy is to restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households, after tax and national insurance contributions have been deducted. By doing this the policy will:

- sit alongside the other measures announced in the 2010 Spending Review to make the system fair and affordable as workless households will no longer receive more in benefits than the average working family receives in pay;
- deliver fiscal savings;
- improve working incentives for those on benefits; and
- deliver fairness to the taxpayer in work.8

During the passage of the *Welfare Reform Act* through Parliament Lord Freud, Minister for Welfare Reform, stressed the intention to effect behaviour changes through the benefit cap:

The benefit cap provides a clear, simple message that there has to be a maximum level of financial support that claimants can expect the state to provide. The aim of this policy is to achieve positive effects through changed attitudes to welfare, responsible life choices and strong work incentives. People must be encouraged to take responsibility for their decisions in light of what they can afford.9

On Report in the House of Lords the Minister referred to public support for the cap:

I would like to make some general points about the rationale for the household benefit cap. First, there is a principled point that households should not be able to receive more on benefits than the average working family in Great Britain earns in work. Secondly, people on benefits should face the same choices as working families, including about where they can afford to live. Thirdly, someone in work should always be better off than someone on benefits. The proposed cap of £500 a week is equivalent to an annual salary of £35,000 a year before tax. We have set the cap at the median earned income for working families after tax and national insurance. We think this is a reasonable representation of average household earnings.

I ask noble Lords to consider how well these principles are received by the public at large. They will have seen press reports

---

8 Impact Assessment for the Household Benefit Cap, updated in July 2012, para 7
9 HC Deb 21 November 2011 GC345
of a YouGov survey that found that 76 per cent of the public are in favour of the benefits cap. The overwhelming majority of people think there should be a limit to the amount of benefit those out of work can receive. We have received many representations that we are pitching the level of the cap far too high. In fact, only 7 per cent of respondents in today’s YouGov survey think that the cap should be higher than £26,000. Another 9 per cent think there should be no cap, so of the people who answered the survey, 69 per cent thought that the cap as we have set it or below that amount is the right figure. Of those who expressed an opinion, the figure is above 80 per cent, or above four-fifths. The truth is that people do not understand why we pay claimants more money when they are out of work than they could reasonably expect to earn from working full time.  

3. Numbers & characteristics of affected households

The Impact Assessment for the Household Benefit Cap, published alongside the Welfare Reform Bill (subsequently updated in January and July 2012), advised that the cap would affect large families (mainly with three or more children) who are out of work, and households in high rent areas who receive substantial Housing Benefit payments. It was initially estimated that around 56,000 households would have their Housing Benefit reduced as a result of this measure in 2013/14 (representing around 1% of the out-of-work caseload) and 58,000 in 2014/15. Revised figures were published in April 2013 – after taking account of the removal of Supported Exempt Accommodation from the cap, and policy changes such as restrictions on benefit uprating, together with methodological improvements, the estimate of the number of affected households in 2013/14 was revised down to 40,000.

It was expected that 46% of those affected would live in the social rented sector and 54% in the private rented sector. The Impact Assessment provided a more detailed analysis of the likely location of affected households:

- A large majority of households affected (52,000) are in England.
- Around three per cent of affected households are in Wales (around 1,500); and around four per cent are in Scotland (around 2,500);
- By region, 49 per cent of affected households are in Greater London. The shares of other English regions are all less than ten per cent, with the South East having 9 per cent (5,000) and the North West and West Midlands both 7 per cent (4,000) and all other regions less than that;
- By local or unitary authority, almost three quarters of areas have fewer than 100 households affected. The local authorities with more than 1,000 households affected (in the year 2013/14) are as

---

10 HL Deb 23 January 2012 c806
11 Impact Assessment for the Household Benefit Cap, updated July 2012, para 14
12 DWP, Ad hoc statistics on Households identified as potentially impacted by the benefit cap, April 2013
follows: Birmingham, Brent, Ealing, Enfield, Hackney, Haringey, Newham, Redbridge, Tower Hamlets, the City of Westminster.

In Scotland, one-third of households affected are in the cities of Glasgow or Edinburgh, with the remaining areas having fewer than 200 households each, and in the majority of cases fewer than 100 households. The number of adults in affected households in Scotland is around 3,500, and the number of children around 7,000.

In Wales, around one in five capped households are in Cardiff, with almost all the remaining areas having fewer than 100 households affected. The number of adults in affected households in Wales is around 2,500, and the number of children around 6,000.13

The original Impact Assessment set out the key non-monetised costs identified by the DWP:

The cap is likely to affect where different families types will be able to live. Housing Benefit may no longer cover housing costs and some households may go into rent arrears. This will require expense and effort by landlords and the courts to evict and seek to recoup rent arrears. Some households are likely to present as homeless, and may as a result need to move into more expensive temporary accommodation, at a cost to the local authority. It is not possible to quantify these costs because they are based on behavioural changes which are difficult to assess robustly.14

The Children’s Society published a briefing on the expected impact of the cap on children in which they concluded that it would have a disproportionate effect on children compared to adults. The key identified risks for children were the threat of homelessness, falling into severe poverty, and experiencing lower levels of well-being.15

An Equality Impact Assessment on the cap was published in October 2011 and updated in July 2012: Household benefit cap – equality impact assessment. The assessment contained the following information on people with protected characteristics under the Equality Act 2010 who were expected to be affected by the benefit cap:

Of the households who lose from this policy, based on internal modelling, we expect roughly half will contain somebody who is classed as disabled under the Equality Act.

Ethnicity: A large proportion of those affected are likely to be large families, implying that households from cultural backgrounds with a high prevalence of large families and households from certain ethnic minorities that tend to have a higher proportion of large families are more likely to be affected.

We estimate that of the households likely to be affected by the cap approximately 40% will contain somebody who is from an ethnic minority. By comparison, the Department’s statistics show that 17% of Jobseeker’s Allowance claimants, 16% of the lone parents claiming Income Support and 9% of Employment and Support Allowance can be identified as being from the ethnic minorities.16

---

13  Ibid para 16
14  Page 2
15  Children’s Society, Distributional impact of the benefit cap, 2011
16  DWP, Household benefit cap – equality impact assessment, July 2012, para 17
The Assessment went on to describe measures the Government is taking as mitigation against the impact of the cap: these include:

- providing support to find employment;
- exempting payments to support childcare costs through Universal Credit from the cap;
- Discretionary Housing Payments (DHPS);\(^{17}\)
- exemptions; and
- allowing a “grace” period.\(^{18}\)

The DWP releases regular statistics on the number of households affected by the cap. The most recent release (14 May 2015) provides information on the numbers affected from the introduction of the cap to the end of February 2015.

**Cumulative measures: 15 April 2013 to February 2015**

- 58.7 thousand households had their Housing Benefit capped.
- 45% of households affected by the benefit cap were in London.

Of the top 20 Local Authorities with the highest number of households affected by the benefit cap, only one was outside London – Birmingham.

**Snapshot measures - of data extracted in February 2015:**

- 23.1 thousand households had their Housing Benefit capped. This is a decrease of 1.2 thousand (5%) from 24.3 thousand households in November 2014.
- 83% of capped households were capped by £100 or less a week.
- 59% of capped households had between 1 and 4 children and 35% had 5 or more children.
- 63% of capped households constituted a single parent with child dependants.

**Off-flow measures - of data extracted in February 2015:**

- 35.6 thousand households (61%) who have (previously) been capped are no longer subject to the cap as at February 2015. Of these, 14.4 thousand households are exempt with an open Working Tax Credit claim, which is 41% of those no longer subject to the cap.\(^{19}\)

On publication of the May 2015 statistics the DWP issued a press release in which it commented on the impact of the cap:

The benefit cap continues to provide a clear incentive to work, with over 22,000 people who had their benefits capped moving

---

\(^{17}\) DHPs can provide further financial assistance to claimants receiving Housing Benefit when an authority considers that additional help with housing costs is required. The Government published revised guidance for authorities on issuing DHPs in April 2014: [Discretionary Housing Payments – Guidance Manual](https://www.gov.uk/government/publications/discretionary-housing-payments-guidance-manual).


into work, reducing their Housing Benefit claim or no longer claiming Housing Benefit at all.\textsuperscript{20}

The same press release referred to ‘recent research’ showing that ‘the cap is motivating people to find work:’

- those who would be impacted by the cap are 41\% more likely to go into work than a similar group who fall just below the cap’s level, but this trend didn’t exist before the cap was in place – indeed those with higher weekly benefit used to be less likely to move into work
- 38\% of those capped said they were doing more to find work, a third were submitting more applications and 1 in 5 went to more interviews
- where households said they intended to seek work because of the cap in February 2014 (45\%), by August the vast majority of them (85\%) had done so
- 2 in 5 (40\%) of those who said they had looked for work because of the cap in February actually entered employment by August.\textsuperscript{21}

\textsuperscript{20} \textit{DWP Press Release}, 14 May 2015
\textsuperscript{21} \textit{DWP Press Release}, 14 May 2015
4. Reaction and comment

The household benefit cap is highly controversial. Lord Kirkwood of Kirkhope described the relevant sections of the Welfare Reform Act as constituting “a direct and dangerous attack on entitlement and the concept of entitlement.” The cap effectively ends the link between a household’s assessed need and its entitlement to benefit.

As the cap is initially being implemented by “squeezing” Housing Benefit entitlement, housing organisations in both the social and private rented sectors expressed concern about its potential impact on rent arrears, evictions and increases in homelessness amongst those affected. The impact was expected to fall disproportionately on larger families – this gave rise to concerns about overcrowding as families might seek smaller, less suitable housing in order to reduce their costs with associated implications for overcrowding.

The Government confirmed that households who become homeless as a result of a Housing Benefit reduction outside of their control should not, as a general rule, be treated as intentionally homeless:

On whether people will be treated as intentionally homeless if they are evicted as a result of rent arrears caused by the cap, again, it is for local authorities to make decisions on individual homelessness applications, as they do now. Under the statutory legislation, if the only reason for a person’s homelessness is a reduction in benefit that is outside their control, they should not be considered intentionally homeless by their local authority. The help available includes cases where the reduction is not much; it includes help in renegotiating rent or making up small shortfalls, help with moving to more affordable accommodation, other means of trying to help people back into the workforce, and so on.

London Councils called on the Government to consider London as a special case when introducing the cap because of its high rent levels; it also wanted London to receive a significant proportion of funding for Discretionary Housing Payments to assist in managing the change.

Richard Capie, director of policy and practice with the Chartered Institute of Housing, said:

The new out of work benefit cap at £500 per week fails to take into account the massive variation in housing costs that exists around the UK and will create hardship for families. Our calculations show that in 20 per cent of communities in England it will be difficult for households to pay their current rents. This will have a particularly severe impact on families with children. We would expect to see greater arrears, debt and evictions. Families will face the inevitable choice of living in overcrowded, poorer conditions in their current community, or having to move away.

---

22  HL Deb 21 November 2011 GC367
23  HL Deb 6 November 2012 GC103
24  London Councils, Response to the Housing Benefit reform, 2010
25  DWP officials advised the SSAC that DHP funding would be allocated to areas with the greatest impact – as a result London authorities are expected to receive the majority of the funding (SSAC Minutes for 13/14 June 2012).
from areas where they have established networks and children are in local schools.

If the housing element of the new universal credit is not sensitive to local housing costs it will not only impact on individuals but also have implications for private and social landlords and jeopardise access to private finance to build new homes.

We need welfare reform that lasts and that individuals and businesses can plan against. The risk is that the approach to housing costs in the current plans won’t be sustainable and will require further adjustments in future.26

The degree of assistance provided through DHPs was questioned. The then Minister, Mark Hoban, responded to this point during the Second Delegated Legislation Committee’s consideration of the draft regulations:

I was asked whether there would be enough discretionary housing payments, and what would happen if funding runs out. We have announced up to £120 million of additional funding for these payments over the next two years. That money should be used to support only those claimants who cannot move immediately into work or more affordable accommodation; it should not be used to meet every shortfall. In addition to the discretionary housing payments, we will also provide employment support and fund local authorities to provide housing and financial support. Claimants should act now and not wait until April; that has been the essence of the work we have done with claimants.27

The National Audit Office’s (NAO) report, Managing the impact of Housing Benefit reform (2012)28 was critical of how the level of DHP funding had been determined:

Over the Spending Review period the Department has set aside up to £390 million of funding for Discretionary Housing Payments for local authorities to tackle transitional consequences of reforms. Funding can also be topped up by local authorities. It is not clear how the overall level of funding has been determined or whether it is likely to be sufficient to tackle the effects of reforms. The total amount represents six per cent of the total savings expected from the Housing Benefit reforms over the Spending Review period, or around £200 per household affected.29

The NAO called for clarification on the process for determining levels of DHP funding, a review of their allocation to authorities, and improved understanding on how DHPs are used. The DWP is requiring authorities to monitor how DHPs are used. The most recent statistics reflecting local authorities’ monitoring returns were published in December 2014; the statistics reflect the use of DHPs between April and September of that year. During this period English and Welsh authorities spent almost

26  Public Service, £500 a week cap could see more overcrowded properties, 5 November 2010
27  Second Delegated Legislation Committee, Session 2012-13, 6 November 2012 c26
28  HC 681, Session 2012-13, 1 November 2012
29  Ibid, para 20
£14.5m of the 2014-15 DHP ‘pot’ (21%) to mitigate the impact of the benefit cap.30

The Institute of Fiscal Studies (IFS) questioned the logic of imposing a cap on benefit entitlement rather than addressing benefit rates directly:

Crucially, is a benefits cap the best approach to take to deal with benefit payments that the Government deems excessive? If it thinks that the benefit system is giving some families a level of entitlement that is too high, it must believe that some benefit rates are inappropriately high. The best-targeted response would surely be to change those benefit rates. In this particular case, the logic underlying the Government’s belief that no family should receive more than £500 per week in benefits would point towards cutting the amount families receive for having large numbers of children and/or reducing the value of housing costs against which people can claim Housing Benefit.

The apparent simplicity of instead just placing a cap on total benefit receipt might look appealing, and may well be politically expedient. But it seems incoherent for a Government to set a system of benefits which it evidently thinks gives some families excessive entitlements, and to then attempt to ‘right this wrong’ with a cap. If starting from scratch, this is surely not the approach one should want to take. And very shortly the Government will be starting from scratch - its planned Universal Credit is to replace almost all of the existing system of means-tested benefits and tax credits for those of working age. If it has a view on the maximum reasonable level of benefit entitlement for these people, then it should design Universal Credit (and in particular, the child and housing cost additions within it) to reflect that view. It is not clear what is gained from instead layering a cap on top of a system that is designed to allow higher payments.31

On 5 November 2012 the Child Poverty Action Group (CPAG) and Lasa (an organisation that helps agencies providing welfare advice) published a report on the impact of three of the Government’s social security measures, including the benefit cap, on claimants in London: Between a rock and a hard place: the early impacts of welfare reform in London.

Ipsos MORI was commissioned by the National Housing Federation (NHF) to carry out ongoing research into the impact of welfare reform on housing associations. In Early effects and responses by landlords and tenants (February 2014) the researchers – subject to the proviso that the benefit cap was at a very early stage of implementation when survey work was carried out – reached the following conclusions:

The Benefit Cap affects far fewer within the housing association sector and is far less widespread than the size criteria. For many associations it may not be possible to distinguish impacts between these two reform measures and current survey responses should be viewed within this context.

- On average associations estimate that 0.19% of all their tenants receiving Housing Benefit have had their Housing Benefit reduced as a result of the Benefit Cap.

---

30 DWP, Use of Discretionary Housing Payments GB: analysis of mid-year returns from local authorities, April to September 2014, December 2014
31 IFS, Thoughts on a benefit cap, February 2012
• Around one in six associations (17%) report increased difficulty in rent collection as a result of the Benefit Cap, with a similar proportion (16%) reporting a rise in arrears.32

The Cambridge Centre for Housing and Planning Research (CCHPR) published Housing associations and welfare reform: facing up to the realities in May 2014. This work, based on in-depth interviews with 15 housing associations across England, concluded that “Fewer tenants than expected were being affected by the Benefit Cap. It was not a major issue for most associations, although clearly very important for affected tenants.” The study highlighted concerns for associations around the potential for future reductions in the cap threshold.33

Subsequent research into the impact of welfare reform carried out on behalf of the NHF has tended to focus on the introduction of size criteria for social housing tenants.

Supported and temporary accommodation

Particular concerns were raised about the application of the cap to households living in supported and temporary accommodation because of the higher management costs and associated rent levels for these types of housing.34 In September 2012 the Government confirmed that help towards housing costs for those living in “exempt” supported accommodation35 would be provided outside Universal Credit. However, housing organisations were concerned that the cap would still apply to residents of exempt supported housing prior to the introduction of Universal Credit. When questioned on the issue during consideration of the draft regulations Lord Freud said:

...once universal credit comes in we are looking to keep the housing costs outside universal credit. I am looking to make some long-term arrangements for people in exempt accommodation. I am particularly concerned about people in refuges and, clearly, in hostels. I acknowledge absolutely the issue of support and exempt accommodation, which needs some quite sophisticated work. Meanwhile, we are writing very specific guidance, as these are the people for whom DHPs really are designed to prevent some effects that we do not want to see.36

As part of the Autumn Statement on 5 December 2012 the Government announced that Housing Benefit paid to households in supported exempt accommodation would be disregarded from the benefit cap and advised that this would be the case from April 2013 and under Universal Credit. Housing Benefit/Council Tax Benefit Circular U5/2012 explains the position:

---

32 Ipsos MORI/NHF, Impact of welfare reforms on housing associations: Early effects and responses by landlords and tenants, February 2014
33 CCHPR, Housing associations and welfare reform: facing up to the realities, May 2014, p2
34 NHF, Submission to the SSAC on the benefit cap regulations, July 2012
35 Exempt supported accommodation is defined as a resettlement place; or accommodation provided by a county council, housing association registered charity or voluntary organisation where that body or person acting on their behalf provides the claimant with care, support or supervision.
36 HL Deb 6 November 2012 GC101
Housing Benefit (HB) paid to households in supported exempt accommodation (S(E)A) is being disregarded from the benefit cap. The disregard will apply both to benefit cap cases under HB from April 2013 and under Universal Credit (UC). While this does not mean that these households are exempt, by not including HB in the calculation we expect that the vast majority of these cases will no longer be affected by the cap.

This change has been made following consideration of the representations raised in recent weeks, particularly in light of the decision to pay housing support outside UC for those living in S(E)A. This positive step will help protect this vulnerable group.

In making the change we recognise that those households in S(E)A will be paying higher than average housing costs and are not generally in a position to make the behavioural changes required to remove themselves from the cap, therefore needing additional support. It also addresses a specific concern about the impact of the benefit cap on those claimants who are fleeing domestic violence into S(E)A.

We had previously stated that this additional support would be met through the additional funding provided through Discretionary Housing Payments (DHPs) for those affected by the benefit cap. To meet the cost of this change before we move to UC we will therefore be reducing the DHP available to support claimants affected by the benefit cap. The national allocation to support those affected by the benefit cap will be up to £65 million in 2013/14 and up to £35 million in 2014/15. This means that the total funding DWP will be providing for Discretionary Housing Payments will be up to £155m in 2013/14 and up to £125m in 2014/15.

This does not result in any real reductions for local authorities (LAs) in their DHPs as it was always intended these funds should be used to support these vulnerable affected claimants. Furthermore we will be removing the need to cap these households and then meet any resulting need with DHPs, thereby reducing the administrative burden on LAs and the uncertainty for affected claimants.

We will be amending the Benefit Cap (Housing Benefit) Regulations 2012 early in the new year with the aim of having the disregard in place as soon as possible after the benefit cap comes into force. Timing will be subject to consultation with LAs.

In terms of the process for applying the benefit cap from April 2013, this change should have minimal impact on LAs as the calculation on S(E)A cases will be completed as normal in DWP. Cases that are below cap threshold levels will not be passed across to LAs.

We will advise separately on how we intend to manage this change for the benefit cap data scan that we will send to LAs in January 2013 (General Information Bulletin HB/CTB G11/2012 covers details of this data scan).

The relevant amendments were made by the Benefit Cap (Housing Benefit) (Amendment) Regulations 2013 (SI 2013/546) which came into force on 15 April 2013.

---

37 HB/CTB Circular US/2012
The sector’s concerns were not wholly allayed by this development. Research by the National Housing Federation found, from a sample of housing associations, “a significant proportion of supported and specialist housing projects do not meet the technical definition of exempt accommodation. As such they would be liable to be hit by the bedroom tax and the benefit cap.” 38 Lord Freud responded to these concerns in a letter of 4 April 2013:

We would like to make clear our intention to protect providers from any unintended consequences. For example, we wish to protect refuges and hostels where care is provided by or arranged through a ‘managing agent’ rather than the landlord. Such arrangements may not meet the precise definition of exempt accommodation but in all other ways the provision is identical to that which does.

Due to the legislative constraints it is not possible to put a solution in place for April. However, officials are working closely with other government departments and key stakeholders to develop workable solutions, through a change to the definition or other means, without increasing current spend. These include local authorities, the National Housing Federation, Homeless Link, Sitra, the Chartered Institute of Housing and the devolved administrations.

Proposals will be brought forward at the earliest opportunity. 39

Subsequently, proposals to exclude most supported accommodation from the benefit cap were referred to the Social Security Advisory Committee and local authority associations.

*The Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014* (SI 2014/771) amended both the *Housing Benefit Regulations 2006* and the *Universal Credit Regulations 2013* so as to provide that, where a claimant lives in supported accommodation or refuge accommodation, any Housing Benefit or UC paid in respect of their housing costs will not be taken into account for the purposes of the benefit cap. Regulation 1 came into force on 10 April 2014 and Regulation 2 on 3 November 2014. Four categories of supported accommodation are not subject to the benefit cap:

- Accommodation which comes within the existing definition of “exempt accommodation”. This effectively protects those in supported housing where the landlord is of a specified type (for example, a housing association or a registered charity) and also provides care, support or supervision to the relevant claimant, or has it provided on their behalf;

- Supported accommodation where the landlord is a specified third or social sector provider and care, support or supervision is provided to residents, but where the accommodation falls outside the existing “exempt accommodation” definition because the care isn’t provided by the landlord or on their behalf. In order to fall within this category, the property must be provided by one of the third or social sector landlord types specified, and the claimant

---

38 NHF website (accessed on 31 May 2013)
39 Lord Freud, *Letter to stakeholders*, 4 April 2013
must have been admitted to the dwelling to meet a need for care, support or supervision, and be receiving such care, support or supervision;

- Third and social sector refuges, including local authority refuges, where the claimant is accommodated there because they are fleeing domestic violence; and
- Local authority hostels providing care support or supervision.\(^{40}\)

The Government also provided information on the treatment of Housing Benefit for claimants living in temporary accommodation.\(^{41}\) It confirmed that the cap **would apply** to these households:

**What impact will the benefit cap have on those in temporary accommodation?**

The benefit cap will apply to people in temporary accommodation whether claiming through HB subsidy or Universal Credit. However, any discretionary housing payments (DHPs) they might receive will not be taken into account, meaning they will be on top of their benefit entitlement under the cap.\(^{42}\)

Lord Freud expanded on this during consideration of the draft regulations:

> On temporary accommodation, a point raised by the noble Lord, Lord McKenzie, that is again an area where we will use DHP. I know that the noble Lord, Lord Best, did some sums, but clearly this will be a huge incentive to move people very quickly to something much more permanent rather than staying for the full year in temporary accommodation, which, as he rightly said, is very expensive. Under universal credit, there are likely to be changes. We are looking at how we deal with temporary accommodation—especially the division between the management costs to which he referred and the actual housing payment element. We are out to consultation on that area and there will be more developments.\(^{43}\)

There remain significant concerns around the impact of the benefit cap on the ability of local authorities, particularly in London, to procure suitable private rented housing for use as temporary housing for homeless households.

> Most authorities predict a rise in the number homeless families as a result of this policy, but their options for dealing with this homelessness are constrained. Waiting lists for the social rented sector in London are exceptionally long, with 11.3 per cent of all households on local authority waiting lists in London, compared to an average of 8.3 per cent in England. Rising private sector rents mean that procuring private sector accommodation within London is not a sustainable solution for local authorities. In addition, the fact that the benefit cap will apply to temporary accommodation means that not **only** families made homeless by the cap, but those already in temporary accommodation, will be unlikely to able to meet their rents, creating a situation in which local authorities will need to make up the difference to avoid making homeless families homeless again.

\(^{40}\) Explanatory Memorandum to SI 2014/771

\(^{41}\) See DWP Circular HB/CTB G6/12, June 2012

\(^{42}\) See DWP Circular HB/CTB G6/12 – Annex A, June 2012

\(^{43}\) HL Deb 6 November 2012 GC101
We found that local authorities were therefore investigating procuring both private and temporary accommodation outside London in cheaper areas of the North and the Midlands. However, strengthened guidance around the ‘suitability’ of the accommodation used to house homeless families means that placements of this kind may be subject to legal challenge.  

In March 2015 the Supreme Court upheld an appeal against Westminster Council’s decision to rehouse a homeless household in Milton Keynes.

**The cap and affordable rent tenure**

One of the Government’s key policies for increasing the supply of social housing is the introduction of an “affordable rent” tenure. Under this model housing associations are able to offer tenancies at rents of up to 80% of market rent levels within the local area. The additional finance raised is available for reinvestment in the development of new affordable housing. Communities and Local Government’s (DCLG) November 2010 consultation document, *Local decisions - a fairer future for social housing* confirmed that Housing Benefit would be payable to cover “affordable rents”:

> Where a tenant cannot afford to pay, the new Affordable Rents will be eligible for Housing Benefit and local authorities will be able to discharge their homelessness function through the new tenancy.

In responses to the “affordable rent” proposals housing organisations highlighted an apparent policy tension between the drive to reduce expenditure on benefits by imposing a weekly cap that will take effect by “squeezing” Housing Benefit entitlement, while at the same time giving housing associations an incentive to charge rents of up to 80% of market levels.

The Council of Mortgage Lenders (CML) expressed concern about the impact of welfare reforms, including the benefit cap, on the financial viability of housing associations:

> For lenders and investors the social housing sector is viewed as a relatively low risk funding market. Comfort is derived from the sector having a strong regulator with the ability to intervene and indirect subsidies in the form of social housing grant and housing benefit. Changes to the welfare benefits system and move to a universal credit have already significantly raised potential risk to the sector. Rating agencies have flagged for investors during 2010 the factors that could be negative for the sector including housing benefit not meeting rent requirements and not being paid direct to providers.

The concerns about housing benefit are brought into sharp focus when considering the move to affordable rent. We await the publication of the Homes & Communities Agency prospectus and further impact assessment on housing benefit. However it is uncertain whether this will provide sufficient detail on the interaction of affordable rent, housing benefit and universal

---

45 *Nzolamesco v City of Westminster*, [2015] UKSC 22
46 DCLG, *Local decisions - a fairer future for social housing*, November 2010, para 2.6
benefit to support providers and lenders in making prudent and realistic assumptions in the modelling work that must sit behind a move to affordable rent.\textsuperscript{47}

CASE, a consortium of housing associations in the south east, published research into the impact of the various welfare reforms, including the benefit cap, on social housing providers. The research cast doubt on the viability of “affordable rents” for larger homes:

Although social rent can be made to work within the cap, our modelling suggests that Affordable Rent does not work for larger homes. Therefore, as we stop building four bedroom properties over the coming years, we expect our ability to house larger families to be greatly diminished. Over the next few years, unless the cap is indexed for inflation, we expect that rent levels on smaller properties will also become increasingly unworkable.\textsuperscript{48}

July 2013 saw reports of the Chancellor considering a reduction in the cap from £26,000 to £20,000.\textsuperscript{49} Housing organisations said that this could jeopardise the development of three-bed homes. Family Mosaic reportedly said that they had already halted development of four-bed units in response to the cap.\textsuperscript{50}

The Welfare Reform Bill in the House of Lords

The household benefit cap was extensively debated as the \textit{Welfare Reform Act} progressed through Parliament. The Government was questioned several times over whether, in setting the cap on the basis of median earnings after tax, it was adopting a fair definition of income. For example, in Grand Committee the Lord Bishop of Ripon and Leeds said:

Linked in this group of amendments are those seeking to produce a fair definition of income. Amendment 99ABB aims to relate the cap to the income of working families rather than simply to their earnings. The principle behind the cap is that households should not be better off living on benefits than they would be in work. Income, for a family that is in work, includes, for example, child benefit or council tax benefit. If we are looking for an equitable comparison, then it is the amount that comes in to the household which is relevant, and not simply that which is on the payslip. To replace earnings by income, as Amendment 99ABB suggests, could remove some 38,000 children from the effects of the cap. Again, the concern is with provision for the growth, development and support of children as they grow up within our culture, and those who need the support of a welfare system as they grow up.\textsuperscript{51}

Lord German argued that separate averages for setting the cap should be used for working households with children and those without.\textsuperscript{52}

Baroness Tyler of Enfield referred to families being forced to move to cheaper areas and the impact this could have on children’s education and their social networks, as well as the potential for “ghettoisation”

\begin{itemize}
\item \textsuperscript{47} CML \textit{Response to Local decisions: a fairer future for social housing}, January 2011
\item \textsuperscript{48} CASE, \textit{The Impact of Welfare Reform on Housing}, January 2012
\item \textsuperscript{49} Inside Housing, “Osborne mulls a further £6K cut to benefit cap”, 17 July 2013
\item \textsuperscript{50} Inside Housing, “Cap to affect family homes development”, 19 July 2013
\item \textsuperscript{51} HL Deb 21 November 2011 GC330
\item \textsuperscript{52} HL Deb 21 November 2011 GC343
\end{itemize}
and pressure on public services. She also expressed concerns over “the inherent couple penalty”:

...it has been suggested by experts in the field that the cap will introduce one of the most substantial couple penalties ever seen in the benefits system, so it could have the perverse consequence of breaking up families as well as deterring people from entering new relationships and forming new households.

Lord Best sought to remove housing costs from the total benefit cap on the grounds that households in similar circumstances face vastly different housing costs, not out of choice, but “because of where they live, what type of landlord they have and the size of home that their family requires.” Lord McKenzie of Luton asked about the impact of localising support with Council Tax payments, pointing out that “the variation in local authority support for council tax also means that how families are affected by the benefit cap will vary by local authority.”

Lord Freud, Minister for Welfare Reform, defended the basis on which the cap is calculated:

I acknowledge that, because of in-work benefits, there will be some working households that earn at the level of the average weekly wage whose total income will exceed the level that we are setting for the cap. However, we believe that work should always pay more than out-of-work benefits. That is one of the driving principles of the Bill and at the heart of our welfare reform.

He went on to reject attempts to limit the cap’s impact on housing costs, arguing that families on benefits should face the same choices in respect of housing affordability as those in work. He confirmed that the Government was looking at the implications of localised support for Council Tax and working with local authorities in connection with the implications of the cap for households placed in expensive temporary accommodation. In response to a question from Baroness Hollis of Heigham, Lord Freud confirmed that households made homeless due to a reduction in benefit entitlement “outside of their control” should not be considered as intentionally homeless.

Lord Freud was pressed on the nature of the “behavioural changes” the Government wanted to achieve in the case of households affected by the benefit cap who are not subject to full work conditionality (i.e. not required to seek work in order to continue to receive benefits), given the Government’s stated aim of improving work incentives through the cap. Lord Freud said “it is perfectly reasonable to encourage and help people towards employment even if they are currently not expected to

53 HL Deb 21 November 2011 GC331-3
54 HL Deb 21 November 2011 GC333
55 HL Deb 21 November 2011 GC333
56 HL Deb 21 November 2011 GC338
57 HL Deb 21 November 2011 GC345
58 HL Deb 21 November 2011 GC346
59 HL Deb 21 November 2011 GC347
60 HL Deb 21 November 2011 GC348
61 HL Deb 21 November 2011 GC353
62 HL Deb 21 November 2011 GC349
work;” he advised that around a third of households affected by the cap would be subject to full conditionality.63

Further attempts to amend the Bill in Grand Committee concerned:

• the exclusion of Child Benefit from calculating benefit income when determining the cap;
• exemptions from the cap for certain groups such as lone parents with children under 5, those who have recently left employment, and carers (kinship carers received particular attention);64
• an exemption from the cap for homeless households in temporary accommodation and for people living in supported or sheltered housing; and
• an exemption from the cap where a child is the subject of a child protection plan, a children in need assessment or a common assessment framework team, or is waiting to be subject to any of these.

Lord McKenzie asked whether the savings expected to arise from the cap would be outweighed by the cost of any resulting homelessness, reductions in the number of family carers, support for vulnerable families and the administration of the cap.65 In July 2011 the Guardian published a leaked letter (reportedly sent to the Prime Minister by the office of Eric Pickles, Secretary of State for Communities and Local Government) expressing concerns over the implications of the benefit cap for local authority expenditure.66

Lord Freud resisted the extension of exemptions from the cap but said that the issues raised in the debate would be taken into account when the regulations on the cap were prepared.67 On the question of savings versus costs, he said that an estimate had been prepared and that the wider ramifications of the cap had been considered – he stressed that the message the Government was sending “is a behavioural one much more than a cost-based one.”68

None of the amendments moved in Grand Committee were agreed.69

Further amendments were debated on Report in the House of Lords - these concerned:

• the exclusion of industrial injuries benefit from counting towards the overall cap (withdrawn);
• applying a cap with regional variations to take account of different regional wages and living costs (withdrawn);
• an exemption for families in priority need who would be made homeless by the application of the cap in addition to an

---

63 HL Deb 23 November 2011 GC415
64 Carers UK and the Disability Benefits Consortium are concerned that the cap will send out a negative message about the value placed on family care and will make caring for elderly/disabled relatives financially untenable for some.
65 HL Deb 23 November 2011 GC414
66 Guardian, Full text of letter from the office of Eric Pickles, 2 July 2011
67 HL Deb 23 November 2011 GC415
68 HL Deb 23 November 2011 GC421
69 The House of Lords does not vote on amendments to a Bill during Grand Committee.
exemption for homeless families in temporary accommodation; and
• the exclusion of Child Benefit from calculating benefit income when determining the cap.

The Lord Bishop’s amendment to exclude Child Benefit from counting towards the total benefit cap attracted wide-ranging support and was agreed by 252 votes to 237.

The House of Commons considered Lords amendments to the Bill on 1 February 2012. The Minister, Chris Grayling, asked the Reasons Committee to ascribe financial privilege as the reason for rejecting the amendment. During the debate on the amendment he said it would reduce the expected savings from the cap by £120m in 2013/14 and £130m in subsequent years. He also announced some concessions in the form of an exemption from the cap for households where someone is in receipt of the support component of ESA but is not in receipt of DLA and the nine month “grace period,” during which the cap will not apply to people who have been in work for the previous 12 months and who lose their job through no fault of their own.

The Lord Bishop’s amendment was overturned in the Commons by 334 votes to 251. A Labour amendment aimed at introducing regional caps set by an independent body was not debated for lack of time.

The Lords considered the benefit cap again on 14 February 2012. The Lord Bishop did not insist on his amendment (to exclude Child Benefit from the cap calculation). Lord McKenzie pressed Labour’s amendment on regional benefit caps to a vote – it was defeated by 223 votes to 134.

Secondary Legislation Scrutiny Committee – 10th Report 2012

This House of Lords Committee considered the draft regulations in October 2012 and recommended that they should be drawn to the attention of the House on the grounds that “they give rise to issues of public policy likely to be of interest to the House.”

The Committee’s report advised that the Social Security Advisory Committee (SSAC) had sent the Secretary of State a “wide-ranging report on the proposals for Universal Credit, which included material on the benefit cap proposals.” The SSAC report (and Government response) was published alongside the key instruments to implement Universal Credit in December 2012. To aid the Scrutiny Committee’s consideration of the draft Regulations the DWP provided a letter summarising the main issues raised in the SSAC report in relation to the benefit cap and setting out the Government’s response:

70 Lord McKenzie pressed this amendment to a vote – it was defeated by 250 votes to 222 (HL Deb 23 January 2012 c829)
71 HC Deb 1 February 2012 c871
72 HC Deb 1 February 2012 c872
73 HC Deb 1 February 2012 cc875-6
74 HC Deb 1 February 2012 c902
75 HL Deb 14 February 2012 c760
76 HL Paper 46, October 2012
The Committee considered the revised proposals at its meeting on 13 June 2012, giving further feedback. This included comment on the requirement set out in the Housing Benefit (Benefit Cap) Regulations 2012 that claimants are engaged in remunerative work of 16 hours in the final week of work before the grace period of 39 weeks could apply. As a result of the Committee’s comment, the Department reconsidered the policy and consequently dropped the 16-hour requirement in the final week of work.

[...]

In relation to the benefit cap, the Committee have noted that they are pleased the Government is putting in place an evaluation strategy. They have made one detailed recommendation on the monitoring and evaluation, requesting that the totality of costs to the taxpayer is, wherever practicable, considered as part of that exercise. The Department is currently exploring what will be included in both the full evaluation and interim review for the benefit cap in 2014. 77

Evidence submitted to the Committee by Shelter on the benefit cap is summarised in the report – some of the issues highlighted have been already been referred to in this note:

Shelter’s evidence highlights concerns about:

Regional variations in rent;

How the cap will operate for people who are temporarily homeless, because they have little scope to reduce their housing costs and under the ‘Homelessness Code of Guidance’ Local Authorities cannot ask people to make up the shortfall through other benefits if this would deprive the household of “basic essentials such as food, clothing heating, transport and other essentials”. There is no explicit exemption for these people in this category;

The use and effectiveness of Discretionary Housing Payments to prevent homelessness. They suggest it should be included in the one year review of the cap;

Whether £500 is the most appropriate figure at which to set the cap as there is a distinction between average household earnings (the figure used) and average household income which as well as wages also takes into account child benefit, working tax credit and similar additional sources of income; and

Whether the proposal to administer the benefit cap via Local Authority housing benefit staff will be cost effective when this will be taken over shortly by the Job Centre Plus staff who will administer Universal Credit. 78

Shelter’s full submission can be accessed online: Submission regarding the Benefit Cap (Housing Benefit) regulations 2012.

Assessment by the Equality and Human Rights Commission (EHRC)

officials’ decision-making met legal obligations to consider the impact on equality when completing the Review.

The Commission identified three areas where it was unable to establish whether or not the decisions were in full accord with the requirements of the duty due to: “a lack of clarity as to: a) where the true site of the decisions lay; and b) whether or not some decisions were the responsibility of other Government departments or the Government as a whole.” One of the areas of concern was the introduction of the household benefit cap. The Commission said:

There was no evidence of any gender analysis or equality screening of the measure provided to HM Treasury ministers prior to the announcement of the measure.

The Commission decided it would be disproportionate to take further formal action and noted that “the Government has, however undertaken to work with the Commission and its officials to address the issues raised by the report.” The Commission’s report called for:

- greater transparency in future reviews;
- the development of a common model of analysis to predict the likely equality effects of policy; and
- earlier use of the equality duties to ensure better targeting of funds and greater value for money.

Legal challenge
Towards the end of May 2013 four families launched a High Court challenge against the Secretary of State arguing that the cap was “discriminatory and unreasonable.”

The families also argued that the Secretary of State did not take into account the impact of the policy on women, children, the disabled, racial and religious minorities, and carers during its formulation. Two of the families concerned had fled domestic violence and were affected by the cap because their rent exceeded £500 per week. 79 The hearing concluded in early October and a decision was handed down on 5 November 2013. The families’ claim for judicial review was dismissed. Lord Justice Elias and Mr Justice Bean reportedly said that many considered the cap to be “too parsimonious” but ruled it was “ultimately a policy issue, and for the reasons we have given we do not think it can be said that the scheme is so manifestly unfair or disproportionate as to justify an interference by the courts.” 80

Subsequent appeals to the Court of Appeal were dismissed. 81 The Supreme Court considered the case on appeal and handed down judgement on 18 March 2015. The court ruled by a 3-2 majority verdict that the benefit cap was not unlawful. However, three of the judges argued that the cap is not compatible with article 3(1) of the UN Convention on the Rights of the Child (UNCRC): ‘In all actions

79 Inside Housing, “DWP faces legal challenge over benefit cap,” 22 May 2013
81 R (SG and others) v Secretary of State [2014] EWCA Civ 156
concerning children… the best interests of the child shall be a primary consideration.” The Deputy President of the Supreme Court, Lady Hale, said:

The prejudicial effect of the cap is obvious and stark. It breaks the link between benefit and need. Claimants affected by the cap will, by definition, not receive the sums of money which the State deems necessary for them adequately to house, feed, clothe and warm themselves and their children.” (Paragraph 180).

It cannot possibly be in the best interests of the children affected by the cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life.” (Paragraph 226). 82

Lord Carnwath, concluding, expressed a hope that the Government would address the cap’s impact on children in due course:

In conclusion I would dismiss the appeal, albeit on grounds much narrower than those accepted by the courts below. I would hope that in the course of their review of the scheme, the government will address the implications of these findings in relation to article 3(1) itself. However, it is in the political, rather than the legal arena, that the consequences of that must be played out. (Paragraph 133).

One year review of the cap

The Benefit Cap: a review of the first year was published in December 2014. 83 The review identified positive ‘employment-focused behavioural change.’ The key findings are reproduced below:

- Evaluation of the benefit cap following its first year of operation shows consistent evidence of employment-focused behavioural change. The movement into work for those households affected by the benefit cap is higher when compared to the numbers moving into work from similar households not affected by the cap.
  - This behavioural change is also evident for sub-groups such as those in receipt of Carer’s Allowance, larger families with three or more children and lone parents (irrespective of the age of the youngest child).

- Greater movement into work is seen for those capped by larger amounts and for households in London.
  - Where households have not yet moved into work they are coping with the cap by budgeting and using support services in the short term while making plans to return to work in the longer term. They are also undertaking more job-seeking activity than previously and are more encouraged to find work. Only a minority of capped households are not doing anything in response, these households tend to be those capped by lower amounts.

- Barriers to moving into work for capped households include the logistics of childcare for multiple children, lack of language skills and limited qualifications.

82 R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent) [2015] UKSC 16
83 Cm 8985
• Additional funding for Discretionary Housing Payments (DHPs) has been provided to ensure those who were not able to make a behavioural change immediately were supported over a transitional period. Evidence suggests DHPs are working; households are seeing them as a temporary solution and receipt of DHPs has not reduced off flow from the benefit cap into work.

• The majority of claimants that were capped have not built up rent arrears. There is evidence that those who had built up arrears and subsequently moved into work were able to make steps to pay those arrears back, as four in five of those no longer affected were up to date with rent.

• Only small numbers of capped claimants are actually moving house and moves that are taking place are generally over short distances. Claimants are, by and large, adjusting to the benefit cap in ways other than moving, such as through finding work or adjusting their budgets. There is some evidence of claimants successfully renegotiating their rent with landlords.

• Benefit cap caseloads are lower than originally estimated with over 51,000 households capped since the introduction of the benefit cap in April 2013 (up to August 2014). In making our original estimates for the number of households that would be capped we did not fully appreciate the scale of the positive benefits of the cap and the motivation it would give to claimants to move into employment. The cap is likely to lead to wider savings from lower benefit receipt amongst those who have moved into employment. Of far greater significance though are the wider benefits of moving towards work for claimants, for their families and for society.84

December 2014 also saw publication of a quantitative analysis by the DWP of the direct impacts of the cap and how the affected people might have responded.85 The Institute of Fiscal Studies (IFS), having peer-reviewed this work, commented on some of the key findings:

Identifying causal impacts of policies on behaviour is rarely easy, but DWP’s analysis allows us to draw some conclusions about the likely effects. The Figure below illustrates perhaps the most striking evidence. It plots the amount of weekly benefit income (before any cap is applied) against the probability of claiming working tax credit (WTC) a year later, for four groups (‘cohorts’) of benefit recipients: those receiving benefits in May of 2010, 2011, 2012 and 2013 (excluding those exempt from the cap, and excluding the single childless who are subject to a different cap level). The May 2012 cohort is the first that we might expect to see changing its behaviour in light of the cap: from May 2012, claimants who looked like they were set to be affected were sent a letter notifying them of this and were offered support through Jobcentre Plus. The cap was then rolled out from April 2013.

The May 2012 and 2013 cohorts were more likely to flow onto WTC than the earlier cohorts at all benefit levels shown – including for recipients below the cap level, which suggests that some of this difference is due to a wider recovery in the economy after 2011 rather than the cap. Crucially though, the divergence

84 Ibid, pp5-6
85 DWP, Benefit Cap: analysis of outcomes of capped claimants, December 2014
between cohorts begins to widen at just around the £500 point at which the cap binds. The divergence grows consistently as one moves to the very highest levels of benefit entitlement, i.e. to those who were hit hardest by the cap. (Note that there are very few claimants at these very high levels of entitlement.)

Figure: Movements onto Working Tax Credit after one year by benefit income (before capping)

Source: Chart 8.2 of DWP Benefit Cap: analysis of outcomes of capped claimants

Notes: £500 benefit cap introduced in 2013. Excludes single adults without dependent children, for whom a lower cap level applies (£350 rather than £500 per week). Figures are four-point moving averages.

DWP conducted some more formal econometric analysis of the kinds of patterns documented in the Figure. On average, claimants with benefit income exceeding the impending cap level in the May 2012 cohort – who received warning of the cap and support in dealing with it - were 1.5 percentage points more likely to flow onto WTC within a year than their counterparts just below (within £50 per week of) the cap. This is over and above any gap that would be expected simply because of observed differences in the characteristics of these two groups, such as the number of children that they have. The difference grew to 4.7 percentage points for the May 2013 cohort, after implementation of the cap. These differences did not exist for the earlier May 2010 and May 2011 cohorts (indeed prior to the cap those with higher levels of benefit income were slightly less likely subsequently to move onto WTC). This suggests that these differences provide a reasonable sense of the likely effect of the cap on movements onto WTC.

It is worth bearing in mind the caveat that starting a WTC claim is not the same thing as moving into paid work. Some people may move into work but not work enough hours to be entitled to WTC or not take up the WTC to which they become entitled. On the other hand, some might start a WTC claim when they were in work all along, perhaps because claiming this entitlement is a relatively easy way of exempting oneself from the benefit cap. To
the extent that additional moves onto WTC are an accurate indicator of moves into work, these estimates suggest that around 2,000 families who were claiming benefits in May 2013 had someone move into paid work twelve months later in response to the cap. (Note: this estimate is for this cohort, rather than an overall estimate of total additional moves to WTC.)

We might also expect some claimants to move house in response, as many affected claimants are above the cap because they have high rents and hence have a large housing benefit claim. There is evidence of this, but (at least so far) only for the small number of claimants who lost particularly large amounts of benefit income as a result of the cap. For those with benefit entitlement at least £200 above the cap level, 14% of the May 2010 cohort moved within the next year; this had risen to 20% for the May 2013 cohort once the cap was in place. For benefit claimants just under the cap level, the proportion moving house within a year stayed constant at 11% for each of the May 2010, 2011, 2012 and 2013 cohorts.86

The DWP’s other research findings, including the results of interviews with affected claimants and the impact on local authorities and social landlords, all of which were published in December 2014, can be found on the GOV.UK website.87

There is no general consensus that the benefit cap, together with other welfare reforms, is proving an effective means of moving claimants into work. For example, the London School of Economics (LSE) surveyed 200 social housing tenants in the south west of England over a two year period and reported the findings in Is Welfare Reform Working? (March 2015). The interviews indicated that tenants were managing by reducing their expenditure in certain areas:

A majority – 126 out of 200, or 63% – said they were managing financially by reducing expenditure, in some cases on food, getting into debt to pay large bills, or borrowing from family and friends. Some ways of coping, such as cutting back on spending, are more viable than others, such as borrowing. One third were struggling financially. The vast majority of tenants are strongly opposed to resorting to payday loans, and only five percent have done so.88

86 IFS, Coping with the cap?, 15 December 2014
5. Reducing the cap threshold

July 2013 saw reports of the Chancellor considering a reduction in the cap from £26,000 to £20,000. At that point housing organisations said it could jeopardise the development of three-bed homes. George Osborne subsequently announced a proposal to reduce the cap to £23,000 at the 2014 Conservative Party Conference as part of a package intended to help finance the creation of three million new apprenticeships:

Let’s abolish long term youth unemployment altogether. So here’s how we’ll do it.
We’ll replace Job Seekers Allowance.
Reform housing benefit.
And take the benefit cap we’ve introduced down to £23,000 – because families out of work should not get more than the average family in work.
And all of these savings will be used to fund three million new Apprenticeships.

A commitment to reduce the cap to £23,000 (£440 a week for families with children) was included in the Conservative Party’s 2015 Manifesto.

The Government has been asked how many claimants will be affected by the reduction of the cap:

Asked by Rachel Reeves (Leeds West)
To ask the Secretary of State for Work and Pensions, what estimate he has made of the number of households in each (a) region, (b) constituent part of the UK and (c) constituency that would be affected by a household benefit cap of £23,000.

Answered by Justin Tomlinson
We will publish a full Impact Assessment in due course.

Is primary legislation required?

Briefing notes on the 2015 Queen’s Speech refer to the introduction of a “Full Employment and Welfare Benefits Bill and other legislation” to encourage employment by capping benefits. As legislative provision for a benefits cap already exists, this has raised the question of whether a reducing the cap to £23,000 will require primary legislation.

The provisions in primary legislation governing the benefit cap are in sections 96-97 of the Welfare Reform Act 2012. Section 96 of the Act provides for regulations setting out details of the cap, including the amount. Subsections (6)-(8) provide that the cap must be set by reference to estimated average earnings, although it gives the Secretary

---

89 Inside Housing, “Osborne mulls a further £6K cut to benefit cap”, 17 July 2013
90 George Osborne: Speech to Conservative Party Conference 2014, 29 September 2014
91 Conservative Party Manifesto 2015, p25
92 PQ 508 [on social security benefits], 3 June 2015
of State leeway as to how average earnings are to be estimated for these purposes:

(6) The amount specified under subsection (5) is to be determined by reference to estimated average earnings.

(7) In this section “estimated average earnings” means the amount which, in the opinion of the Secretary of State, represents at any time the average weekly earnings of a working household in Great Britain after deductions in respect of tax and national insurance contributions.

(8) The Secretary of State may estimate such earnings in such manner as the Secretary of State thinks fit.

Section 97 of the Act provided for the first version of the regulations made under section 96 to be subject to the affirmative resolution procedure. Any subsequent regulations made under the powers in section 96 will be subject to the negative procedure.93

The current level of the cap was announced well in advance of the publication of the 2012 regulations. The most detailed explanation of how the Government arrived at the figure of £26,000 is provided in a DWP technical note (October 2010):

HOW THE ILLUSTRATIVE MEDIAN NET EARNED INCOME FOR WORKING FAMILIES HAS BEEN CALCULATED

The Spending Review announced that household welfare payments will be capped on the basis of median earnings after tax and National Insurance Contributions for working households from 2013. This was estimated to be around £500 per week for couple and lone parent households and £350 per week for single adults by 2013/14, when the cap will be introduced.

This estimate was produced using the Department for Work and Pensions’ Policy Simulation Model. This is a static microsimulation model based on data from the 2008-09 Family Resources Survey, up-rated to the relevant year’s prices, benefit rates and earnings levels. The modelling was carried out under the current benefit system rules. Note that in cases where households contain more than one benefit unit,1 the median earnings after tax and National Insurance Contributions were calculated at the benefit unit level.

The DWP said that the threshold was a forward-looking estimate of what the median net earnings level would be for couple households in 2013-14. At this point, it is unclear whether the reduced cap of £23,000 is based on a similar benchmark analysis of household earnings.

Section 97 of the Welfare Reform Act 2012 also amended the Social Security Administration Act 1992 to require the Secretary of State, as part of the annual benefits uprating cycle, to review the level of the benefit cap “to determine whether its relationship with estimated average earnings (within the meaning of [section 96]) has changed”

93 Negative Statutory Instruments become law on the date stated on them, unless they are “prayed against” and the Commons or Lords passes a motion calling for their annulment within a certain time. The period is 40 sitting days, including the day on which the regulations were laid.
and, if he considers it appropriate, to include in the draft uprating order a provision “increasing or decreasing that amount” (emphasis added).

To date, the Secretary of State has not considered it appropriate to use these powers to increase or decrease the level of the cap. Given the wording of the legislation, it raises the question of whether the cap could be reduced to £23,000 via this mechanism without giving some justification linked to average earnings. An alternative approach could be to amend the primary legislation.

Comment
The IFS’s commentary, Coping with the cap? (December 2014), included reference to the Conservative Party’s commitment to reduce the cap:

At its Autumn conference, the Conservative Party suggested lowering the benefits cap by approximately a further £60 per week (to about £440 per week). On the basis of the analysis published today, it would be reasonable to expect this to result in some of the affected claimants moving into work, but few moving house – the maximum possible loss of benefit income, from this additional hypothetical cut, would be £60 per week, and the current cap seems to have increased house moves only among those who lost substantially more than that.

Nevertheless, there is still much we do not know. There are various other possible responses to this reform, including cutting back on spending, running down savings (or building up debts) or getting help from family or friends. Analysis of benefits data cannot tell us about this (although DWP have also conducted surveys of, and in-depth interviews with, those subject to the cap and these provide some information on other potential responses). What the quantitative analysis does tell us is that the large majority of affected claimants responded neither by moving into work nor by moving house. For this majority, it remains an open question as to how they adjusted to what were, in many cases, very large reductions in their income.94

In May 2016 the IFS published Benefit cuts: where might they come from? in which it estimated that a reduction in the cap threshold would result in savings of around £100 million:

Reducing the benefits cap from £26,000 to £23,000 per year would hit some families with several children and/or high rents hard: the biggest losers would be about 24,000 families who are already capped and who would lose another £3,000 per year (i.e. up to 11.5% of their income). But because in total fewer than 100,000 families would be affected and most would lose less than this, the policy reduces spending by only £0.1bn. Evidence from the current cap (discussed here) suggests that, at least in the short-term, a small minority of affected claimants will respond by moving into work – the cap does not apply to claimants of Working Tax Credit – and that very few indeed will respond by moving house.95

Moat housing association, which provides social housing across the south-east, carried out an analysis of the impact of a cap set at £23,000 on its tenants. The discussion paper, Rent levels and the benefit cap (December 2014), concluded that a cap at this level would make all its

94  IFS, Coping with the cap? December 2014
95  IFS, Benefit cuts: where might they come from?, May 2015
three-bedroom properties unaffordable for families in receipt of full Housing Benefit. Two-bedroom properties in all but eight local authorities in which Moat operates would become unaffordable within four years.\textsuperscript{96} When taking account of affordable rent levels (rents set at up to 80\% of market rents),\textsuperscript{97} Moat described the potential impact as ‘alarming’:

\ldots it shows that paying rent would become extremely problematic for many additional families on Housing Benefit under a £23,000 cap. All three bedroom properties would become instantly unaffordable under the proposal, and many two bedroom properties would become unaffordable also. It is important to note that this analysis is based on actual housing association rents, not 80\% of market rent, so this is a reflection of what would happen under what is currently being charged.\textsuperscript{98}

In order to ensure ongoing affordability of two-bedroom affordable rent properties in the south-east under a reduced benefit cap, Moat concluded that associations: “would need to begin depressing rent levels across virtually all local authorities in the South East.” Moat went on to acknowledge that this approach may not be acceptable to the Homes and Communities Agency “given that it would have major consequences on development programmes which would have to be revised downwards to cover lost revenue.”\textsuperscript{99} In the event of a lower cap resulting in increased rent arrears and evictions, there is a possibility that this would impact on lenders’ willingness to finance future development as this is based on an assessment of tenants’ ability to afford their rent.

The Moat discussion paper also refers to the potential impact that a reduction in the cap would have for the increasing number of benefit-dependent and vulnerable households in the private rented sector (PRS). The PRS now houses more households in England than the social rented sector and these households are liable, particularly in London and the south east, to pay substantial levels of market rents.

The UK Housing Review 2015 Briefing Paper (June 2015) considers the impact of a cap of £23,000 and concludes that £110 per week for couples with three children “would be insufficient to meet an average housing association three-bedroom social rent anywhere in either the Midlands or the south of England, and even in many areas in the north of England.”\textsuperscript{100}

The chart below (taken from the Briefing Paper) shows how a lower cap would affect the amount available to couples to meet their housing costs (including Council Tax):

\begin{itemize}
\item \textsuperscript{96} Moat Housing Association, \textit{Rent levels and the benefit cap}, December 2014, p5
\item \textsuperscript{97} See section 4 of this note (p19)
\item \textsuperscript{98} Moat Housing Association, \textit{Rent levels and the benefit cap}, December 2014, p7
\item \textsuperscript{99} Ibid, p8
\item \textsuperscript{100} Steve Wilcox, John Perry & Peter Williams, \textit{UK Housing Review 2015 Briefing Paper}, June 2015, p15
\end{itemize}
Deputy chief executive of the Chartered Institute of Housing (CIH), Gavin Smart, has said:

People affected by the current cap already face significant barriers to finding work, including a lack of job seeking skills and affordable childcare. Our UK Housing Review briefing shows that lowering the cap would make huge swaths of the country unaffordable for larger families on benefits. Where will these people go? Being forced to move large distances away will make it even harder to find work, because they could be cut off from the support network they rely on for childcare for example.

The social housing sector is already struggling to cope with demand. I fear we will see increasing levels of homelessness, with already vulnerable people being subjected to even more risk.

Ultimately, if the government really wants to tackle the housing benefit bill, it needs to commit to building more genuinely affordable homes. We have failed to build the number of homes we need for decades which means that the cost of housing is becoming unaffordable for more and more people, increasing the numbers who rely on the benefits system to make ends meet.

Action to restrict entitlement to benefits is at best a stop gap measure and at worst increases poverty and misery for already poor and vulnerable people. Long-term, effective action would focus on increasing our housing supply not further restricting access to our already insufficient and inadequate supply of homes.101

The Policy Exchange think tank published a Welfare Manifesto in February 2015 in which it recommended the introduction of a “two-tier” cap to “reflect regional differences in incomes and housing costs.”

The cost of living varies across regions, and both Labour and the Conservatives have indicated that regional differences in the cost of living could be reflected in welfare design. The first stage of creating a regionalised system would be to create two levels of benefit cap, one for London and the South East where average incomes within the UK are the highest, and one for the whole of the rest of the UK. The level of the two caps could be set to reflect the relative difference between the lowest average income region in London and the South East, and the highest average income region in the rest of the UK. There would be a choice of

---

101 CIH, Reduced benefit cap would make many areas off-limits for larger families, 22 June 2015 [accessed on 29 June 2015]
what level to put the higher cap area at. It could be £26,000 currently in place; it could be higher or it could be lower.102

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer - This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the conditions of the Open Parliament Licence.